

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SJT DEVELOPMENT, INC., a)
Nevada Corporation, and SANDRA)
M. TRIANTAFILLOS,)

Plaintiffs,)

v.)

RACHEL L. RIEGER, DAVID L.)
RIEGER, DEANA M. GUHDE,)
DAVID F. GUHDE, MATTHEW)
WILSON, d/b/a Joe Wilson & Co.,)
ENDEAVOR DEVELOPMENT &)
INVESTMENT GROUP, INC., a)
Nevada Corporation, JOHN)
REYES, JEFFREY KINNICK,)
JAMES VEGA, JOHN DOES I-V,)
real names unknown, LEVEL ONE)
FINANCIAL, INC., a California)
Corporation, STAR CAPITAL)
CORPORATION, a Delaware)
Corporation, SILVER HILL)
FINANCIAL, LLC, a Delaware)
Limited Liability Company,)
WACHOVIA BANK, NA, JOHN L.)
BERNARD, d/b/a Bernard Real)
Estate, IB PROPERTY HOLDINGS,)
LLC, a Delaware Limited Liability)
Company, RANDY BENNETT, and)
BAYVIEW LOAN SERVICING, LLC,)
a Delaware Limited Liability)
Company,)

Defendants.)

CASE NO. 8:11CV179

MEMORANDUM
AND ORDER

Before the Court is the Order and Findings and Recommendation of Magistrate
Judge F.A. Gossett (Filing No. 64) ordering that Plaintiffs' second counsel's motion to

withdraw be granted and recommending that judgment be entered in favor of the Defendants as to all claims asserted by the Plaintiff SJT Development, Inc. ("SJT"). Also before the Court is the motion for voluntary dismissal filed by Plaintiff Sandra M. Triantafillos (Filing No. 65).

PROCEDURAL HISTORY

This case was removed from the District Court of Nemaha County, Nebraska. In the Complaint are thirteen causes of action alleging: breach of fiduciary duty; fraudulent misrepresentation; fraud; negligent misrepresentation; tortious interference; breach of contract; civil conspiracy; and violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, 1962(d). According to the Complaint, the allegations arose out of the sale of an apartment building to Triantafillos, who alleged that she is the sole shareholder, director, and officer of SJT. The Court granted the motion to withdraw filed by Plaintiffs' first attorney. A second attorney entered his appearance.

Defendants Matthew Wilson and IB Property Holdings, LLC ("IB"), filed motions to dismiss (Filing Nos. 31, 42). Wilson's motion was based on Federal Rule of Civil Procedure 12(b)(6), and IB's motion alleged that it was not named in any of the causes of action. After the motions to dismiss were filed, Judge Gossett held an evidentiary hearing with respect to the motion to withdraw filed by Plaintiffs' second counsel. Neither Triantafillos nor any other representative of IB appeared at the hearing.

Judge Gossett's Order and Findings and Recommendation followed, in which he: granted the motion to withdraw filed by Plaintiffs' second counsel;¹ and ordered Triantafillos

¹As Judge Gossett noted, Plaintiff SJT is now in default because corporate defendants may not proceed pro se. *City of Kansas City, Mo. v. Hous. & Econ. Dev. Fin. Corp.*, 366 Fed. App'x 723, at **1 (8th Cir. 2010).

to file an affidavit and response to the pending motions to dismiss by November 29, 2011. Judge Gossett recommended that SJT be held in default and judgment be entered in favor of Defendants as to all claims asserted by SJT.

Triantafillos timely filed her Affidavit, which included her motion to dismiss, without prejudice, all claims against all Defendants.

No objections to the Findings and Recommendation have been filed. Nevertheless, under 28 U.S.C. § 636(b)(1) the Court has conducted a de novo review of the record and adopts the Findings and Recommendation in their entirety. Moreover, the Court grants Triantafillos's motion for voluntarily dismissal of all claims.

IT IS ORDERED:

1. The Magistrate Judge's Findings and Recommendation (Filing No.64) are adopted in their entirety;
2. All claims asserted by Plaintiff SJT Development, Inc. are dismissed, without prejudice, as against all Defendants;
3. Plaintiff Sandra M. Triantafillos's Motion to Dismiss (Filing No. 65) is granted, and all claims asserted by her are dismissed, without prejudice, as against all Defendants;
4. All other pending motions are denied as moot; and
5. A separate Judgment will be entered.

DATED this 6th day of December, 2011.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge